

9.1 General Discussion

Since this manual outlines the federal procedures that a local agency must follow for a Federal Highway Administration (FHWA) funded project, only compliance with the National Environmental Policy Act (NEPA) will be described in detail. If a local agency needs assistance in determining the environmental classification of a project, they are encouraged to contact the Montana Department of Transportation - Environmental Services Bureau to arrange for a field review of the proposed project. Also, a local agency should be aware of the following Montana Environmental Policy Act (MEPA) requirements:

- All projects, regardless of the funding source, must comply with: MEPA (75-1-201 MCA), Section 7 of the Endangered Species Act of 1973 (ESA) and Section 4, Part (d) of the ESA.
- While Environmental Impact Statement (EIS) documentation that meets NEPA requirements usually satisfies MEPA requirements, MEPA documents do not necessarily satisfy NEPA requirements.
- No EIS is required when a NEPA Environmental Assessment (EA) supports a NEPA Finding of No Significant Impact (FONSI).
- When the NEPA EA or EIS is developed in coordination with state and local agency requirements, the document and its appropriate review and processing may be adopted to satisfy MEPA requirements in accordance with 75-1-201 MCA.

When the project involves federal funds or federal permits, its environmental requirements are governed by:

- NEPA of 1969, 42-USC-4321 et seq.
- Council on Environmental Quality Regulations for Implementing NEPA, 40 CFR, Parts 1500, et seq.
- Federal Highway Administration — Federal Transit Administration, 23 CFR, Part 771.
- Environmental Impact and Related Procedures, 49 CFR, Part 622.
- Section 7 of the ESA, 50 CFR, Part 402 and Section 4, Part (d) of the ESA. This manual and the Montana Department of Transportation's (MDT) *Environmental Procedures Manual* should be used to conduct the environmental evaluation.

Environmental evaluation starts with project classification which is normally the initial step in project development. A project will fall into one of three defined classes, depending on the extent of its impacts. The three classes are defined in Section 9.2.

Federal regulations require the use of an interdisciplinary approach to assess a project's social, economic, and environmental impacts. "Interdisciplinary" means integrated consideration of the project's aspects through such disciplines as biology, economics, geology, sociology, urban planning, archeology, communications, and acoustics in addition to traditional civil engineering expertise. Interdisciplinary requirements for each class of project are discussed in Sections 9.3, 4, and .5. The MDT Environmental Services Bureau Chief can advise local agencies on how to set up an interdisciplinary approach.

For projects that may involve historic and/or archaeological lands, the local agency should contact the MDT Historian. MDT will contact the State Historic Preservation Office.

It is permissible to complete activities, such as budgeting, proposal development, legislative or feasibility studies, and value engineering studies prior to the environmental evaluation. At the discretion of the local agency, other activities, such as preliminary engineering for soil surveys and location studies, may be done in conjunction with or prior to the environmental evaluation.

All EISs will be written in a format described in the MDT *Environmental Procedure Manual*. If these documents are presented to the public, the documents must have English units. Therefore, if a project is designed in metric, the environmental documents must show dual English/metric units.

9.2 Project Classification

All projects will be classified by the local agency, in coordination with MDT, as defined below. The classification should take place as early as possible in the project's development since the scope of the subsequent environmental evaluation and documentation processes depends on the project's class. Upon this determination, the local agency completes the environmental classification section of the project proposal. The following paragraphs define the three classes of projects and list types of work typically found in each class.

NEPA — Environmental Impact Statement (EIS)

Actions likely to have significant impact on the environment by virtue of their effects upon land use, planned growth, development patterns, traffic volumes, travel patterns, transportation services, natural resources, or by virtue of the fact that they are apt to create public controversy are EIS projects. An EIS can be prepared without developing an Environmental Assessment (EA). Refer to Sections 9.3 and 9.7. Projects which usually require an EIS are:

- a. A new controlled-access freeway.
- b. A highway project of four or more lanes on a new location.
- c. New construction or extension of fixed rail transit facilities (e.g., rapid rail, light rail, commuter rail, automated-guideway transit).
- d. New construction or extension of a separate roadway for buses or high-occupancy vehicles not located within an existing highway facility.

The local agency checks the "preliminary" box and completes the Local Agency "Environmental Classification Summary" (ECS) form utilizing known project information, as developed in the planning stage on all EIS projects. The ECS is submitted by the local agency with the Project Proposal and the Local Agency Agreement to the MDT Environmental Services Bureau Chief for submittal to FHWA for preliminary concurrence. The local agency distributes copies to resource agencies for information and coordination purposes.

EIS projects under the NEPA/MEPA/Section 404 involve projects that impact Waters of the United States and may require an individual permit from the U.S. Army Corps of Engineers (COE). Local agencies will perform the required environmental scoping as a priority after project funding is obligated. After scoping is completed, the local agency checks the "final" box and completes the ECS for submittal to the MDT Environmental Services Bureau Chief for FHWA's

final concurrence. The local agency distributes copies to resource agencies for information and coordination purposes.

After scoping is completed for EIS projects, the local agency checks the “final” box and completes the ECS for submittal to the MDT Environmental Services Bureau Chief for FHWA’s final concurrence. The ECS should be submitted as early as possible and/or practical in the project development stage. The local agency distributes copies to resource agencies for information and coordination purposes.

NEPA — Categorical Exclusion (Cat Ex)

Unless specifically requested by other agencies or the public, these actions do not require an EIS or an EA.

Cat Exs are actions which meet the definition contained in 40 CFR 1508.4 and, based on past experience with similar actions, do not involve significant environmental impacts. They are actions which: do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic, or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts.

Any action which normally would be classified as a Cat Ex but could involve unusual circumstances will require the FHWA, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the Cat Ex classification is proper. Such unusual circumstances include:

- Significant environmental impacts;
- Substantial controversy on environmental grounds;
- Significant impact on properties protected by Section 4(f) of the DOT Act or Section 106 of the National Historic Preservation Act; or
- Inconsistencies with any federal, state, or local law, requirement, or administrative determination relating to the environmental aspects of the action.

Cat Ex projects requiring documentation (Documented Cat Ex)

Projects in this category require the local agency to complete the ECS and conduct a biological assessment evaluation (Section 9.7) for submittal to the MDT Environmental Services Bureau Chief for FHWA’s concurrence prior to beginning the Plans, Specifications, and Estimates (PS&E) phase.

Projects may require detailed environmental studies for Cat Ex documentation to determine the environmental, economic, and social impacts. After obligation of PE funds, the detailed analyses can take place and the local agency finalizes the ECS for final approval.

Examples of these situations are as follows:

1. The acquisition of more than minor amounts of temporary or permanent strips of right-of-way for construction of such items as clear vision corners and grading. Such acquisitions will not require any commercial or residential displacements.
2. The use of properties protected by Section 4(f) of the Department of Transportation Act (49 USC 303).

3. A determination of adverse effects by the State Historic Preservation Office.
4. Any U.S. Army Corps of Engineers Section 404 permits.
5. Any work in wetlands.
6. Any work encroaching on a regulatory flood-way or any work affecting the flood-plain (100-year flood) elevations of a water course or lake.
7. Construction in, across, or adjacent to a river designated as a component or proposed for inclusion in the National System of Wild and Scenic Rivers published by the U.S. Department of the Interior/ U.S. Department of Agricultural.
8. Any impacts to federally listed Threatened and Endangered Species.
9. Any changes in access control.
10. The use of a temporary road, detour, or ramp closure unless the use of such facilities satisfy the following conditions:
 - Provisions are made for access by local traffic and so posted.
 - Through-traffic dependent business will not be adversely affected.
 - The detour or ramp closure, to the extent possible, will not interfere with any local special event or festival.
 - The temporary road, detour, or ramp closure does not substantially change the environmental consequences of the action.
 - There is no substantial controversy associated with the use of temporary road, detour, or ramp closure.
11. Any known hazardous materials sites or previous land uses with potential for hazardous materials sites or previous lands uses with potential for hazardous materials remains within the right-of-way.
12. Any projects that involve unusual circumstances not listed or public opposition.

NEPA — Environmental Assessment (EA)

For actions in which the significance of the impact on the environment is not clearly established, an EA is prepared to determine the extent of environmental impact and to determine whether an EIS is needed. No EIS is required when the EA supports a NEPA Finding of No Significant Impact (FONSI). Refer to Sections 9.5 and 9.7.

The local agency checks the “preliminary” box and completes the Local Agency “Environmental Classification Summary” (ECS) form utilizing known project information, as developed in the planning stage on all EA projects. The ECS is submitted by the local agency with the Project Proposal and the Local Agency Agreement to the MDT Environmental Services Bureau Chief for submittal to FHWA for preliminary concurrence. The local agency distributes copies to resource agencies for information and coordination purposes.

EA projects under the NEPA/MEPA/Section 404 involve projects that impact Waters of the United States and may require an individual permit from the U.S. Army Corps of Engineers (COE). Local agencies will perform the required environmental scoping as a priority after project funding is obligated. After scoping is completed, the local agency checks the “final” box and completes the ECS for submittal to the MDT Environmental Services Bureau Chief for FHWA’s final concurrence. The local agency distributes copies to resource agencies for information and coordination purposes.

9.3 Procedures for EIS Projects

Notice of Intent

After FHWA authorization of preliminary engineering funds, the local agency prepares a Notice of Intent for publication in the Federal Register advising federal, state, and local agencies that an EIS will be prepared. The contents and guidelines for preparation of the notice are found in FHWA Notice N 6640.19 of March 24, 1980. The notice is submitted to the MDT Environmental Services Bureau Chief who submits it to FHWA for placement in the Federal Register. EIS projects in Montana have typically been taking two or more years to complete from the date of publication the Notice of Intent in the Federal Register.

Project Manager (PM) and Interdisciplinary Team (IDT)

The agency administrator delegates the project's administrative responsibilities to a Project Manager and provides support staff to assist in project administration.

The local agency appoints experts in various disciplines to an IDT which functions as an advisory board to the agency administrator. The IDT provides objective, in-depth studies, analyses, reports, guidance, and recommendations concerning the proposed improvement as it relates to social, economic, and environmental issues.

The disciplines and personnel selected for the IDT depend on the nature and magnitude of the project. The local agency may request MDT to assign discipline representatives to the IDT. MDT personnel are assigned when available and may be supplemented by consultants, personnel from other state or local agencies, and the community. The IDT, community groups, and planning agencies may suggest inclusion of additional disciplines.

IDT members may have expertise in such areas as acoustics, air quality, archaeology, architecture, biology, botany, communications, economics, geology, hydrology, landscape-architecture, meteorology, sanitary engineering, sociology, structural engineering, transportation planning, urban planning, water quality, and other disciplines as appropriate.

Duties and responsibilities of the IDT include:

- a. Review and approval of a study plan and a public involvement plan.
- b. Evaluation of alternative courses of action.
- c. Preparation of reports (data and conclusions of technical studies; views of citizens, officials, and groups).
- d. Submission of recommendations to the PM. The PM, in consultation with the various disciplines, prepares a proposal, identifies affected parties, and outlines environmental concerns and alternatives to be included in the scoping process.

Scoping

Scoping is a process used to identify potential environmental concerns or controversy and alternatives for the EIS as early as possible. It includes a series of meetings, telephone conversations, or written comments involving various agencies, interest groups, and individuals. The PM is responsible for development and coordination of the scoping process. Specific scoping objectives are:

- a. To identify the affected public and agency concerns.
- b. To define the issues and alternatives to be examined in detail in the EIS.
- c. To save time by attempting to ensure that draft EISs adequately address relevant issues, thus reducing the possibility that an EIS will have to be rewritten or supplemented.

- d. To facilitate an efficient EIS preparation process by assembling the cooperating agencies, ascertaining which permits and reviews need to be scheduled concurrently, and establishing completion times.

Prior to the scoping process, the local agency provides affected agencies, Indian tribes, interest groups, and the IDT with information about the proposal including a brief description, statement of goals, tentative alternatives, probable environmental impacts and issues, maps, drawings, and a brief explanation of the scoping procedure. The PM documents proceedings and correspondence concerning the scoping process.

The scoping process continues through the development of the Draft Environmental Impact Statement (DEIS).

Study Plan and Public Involvement Plan

Prepare a study plan to be completed immediately after the issues and alternatives have been identified in the initial stages of the scoping process. The study plan, which shows the environmental studies to be conducted, is prepared by the PM and approved by the IDT and the local agency. The study plan describes the level of effort intended for defining the interdisciplinary approach, public involvement, alternatives to be studied, and social, economic, and environmental issues.

The study plan should indicate the following:

1. Title sheet:
 - (a) Project title.
 - (b) Date.
 - (c) Approval date and signature of:
 - Team chairman.
 - Agency administrator.
2. Vicinity map.
3. Need and purpose:
 - (a) Need (known deficiencies).
 - (b) History (if applicable).
 - (c) Purpose of project.
 - (d) How proposed project will satisfy the need.
4. Scope of work:
 - (a) Interdisciplinary approach (brief description of how the team uses interdisciplinary information to reach decisions).
 - (b) Alternatives.
 - (c) Public involvement summary (to date).
 - (d) Brief description of areas of primary importance and significant controversy.
5. List of cooperating agencies.
6. Studies to be prepared and areas of responsibility:
 - (a) List of studies to be prepared and disciplines involved.
 - (b) Identify IDT members, project manager, and IDT chairperson.
 - (c) Identify education and experience of all expertise in format required for EIS.
7. Staffing and budget requirements.
8. Project schedule.

9. Date and location of scoping meetings.
10. Appendix: Public involvement plan.

Prepare a public involvement plan that outlines the procedures for presenting information to the public, obtaining comments, and ensuring consideration of public opinion. See the MDT *Public Involvement Handbook* for guidance on public involvement.

In preparing the public involvement plan, consider the following:

1. Methods to provide information and receive comments:
 - (a) Public meetings.
 - (b) Surveys of public opinions.
 - (c) Meetings with groups having special interests in transportation.
 - (d) Information centers or booths.
 - (e) Advisory committees.
 - (f) Meetings with public officials.
 - (g) News releases (all mass media).
 - (h) Newsletters.
 - (i) Presentations and call-in questions on radio and television talk shows.
2. Time schedule to accomplish each task (different methods may be carried out simultaneously.)
3. Methods to be used in considering public comments during the decision-making process.
4. Personnel, time, and funds required to conduct the program.
5. The public involvement plan is a part of the scoping process.

Selection of Alternatives

The alternatives to be studied are identified by the PM, the IDT, and through the scoping process. The IDT studies proposed alternatives and determines their likely social, economic, and environmental effects. Generally, each alternative is developed to the same level of detail so that comparisons of effects can be made. The draft EIS shall evaluate all reasonable alternatives to the action and discuss the reasons why other alternatives which may have been considered were eliminated from detailed study. Alternatives are to be openly discussed with all affected groups.

A listing of features to be considered for each alternative, along with a comparative matrix to assess differences, is shown in the EIS Outline found in the MDT *Environmental Procedures Manual*.

Alternatives normally include the following:

- a. The no-action alternative which could include short-term minor reconstruction activities (safety improvements, etc.) that are part of an ongoing plan for continuing operation of the existing roadway.
- b. Improvement of the existing facility, which could include resurfacing, restoration, rehabilitation, and reconstruction types of activities.
- c. Construction of new transportation facilities on new routes and locations.
- d. Multi-modal alternatives, including public transit, rail, or other modes dictated by the characteristics of the study area. These may be under the jurisdiction of other lead agencies and require early coordination.
- e. Possible combinations of b, c, and d above.

Data Collection, Inventory, and Evaluation

The IDT develops an inventory of social, economic, environmental, and engineering data. The information is used to define the environment; to predict and analyze project impacts; to help select the preferred alternative; to prepare environmental documents; and to inform other agencies, interest groups, or individuals. Sources of data include, but are not limited to, field studies, consultation, and coordination with other agencies and the public. The MDT *Environmental Procedures Manual* and FHWA Technical Advisory (T6640.8A) are general guides to the types of information, depth of study, and procedures to be used in collection, inventory, and evaluation of required environmental data. The following is a list of areas considered in the development of an environmental document.

- Land Use
- Farmlands
- Social Conditions
- Transportation Right-of-Way
- Economic Conditions
- Pedestrian and Bicycle Facilities
- Air Quality
- Noise
- Water Quality
- Wetlands and other waters of the U.S.
- Waterbodies and Wildlife Habitat
- Floodplains
- Threatened and Endangered Species
- Historic and Archeological Resources
- Hazardous Wastes
- Visual Resources
- Construction Activity Impacts
- Irreversible and Irretrievable Commitment of Resources
- Relationship of Short-Term Uses of Environment and Long-Term Productivity
- Secondary and Cumulative Impacts

(see the MDT *Environmental Procedures Manual* for additional information)

Reports and Recommendations

- a. *Discipline Reports.* After data has been collected, inventories compiled, and analyses completed, each discipline representative prepares an independent report. The reports document the technical studies and investigations performed, provide a summary of findings, and list recommendations. If there are any individual reports, they should be submitted to the project manager for review.

Since the reports must communicate equally to technical and non-technical groups, a summary is written to present the significant findings and recommendations in non-technical terms. The information is presented in a form suitable for incorporation into the EIS, for presentation at public hearings, or for use by management and lay groups in decision-making. The summary must contain an introduction, conclusions, and recommendations.

The technical portion of the discipline report provides evidence that all the major areas of potential impact have been considered. It presents information to support the findings of significance and effect, and demonstrates clearly that the study is in compliance with the requirements of environmental law. The discipline report normally contains:

- Summary of report findings, conclusions, and recommendations.
- Background discussion.
- Study methodology.
- Coordination with other groups or agencies.
- Affected environment (existing conditions).
- Prediction of impacts of each alternative.
- Impact mitigation measures.
- Potential Impacts of Construction
- Maintenance and operation information.
- Bibliography.

b. *Biological Evaluation.*

c. *Preliminary Recommendations.* The PM reviews all discipline reports and documents preliminary recommendations after discussing the various trade-offs with the IDT.

d. *Draft Environmental Impact Statement (DEIS) and Commitment Summary.* The DEIS is the initial local agency project report. It identifies the alternative actions and presents an analysis of their impacts on the environment. Usually the DEIS does not identify a recommended course of action. The DEIS summarizes the early coordination process, including scoping, and identifies the key issues and pertinent information received through these efforts.

All EIS documentation must comply with the requirements of NEPA and the Council on Environmental Quality (CEQ) guidelines.

The local agency prepares a preliminary DEIS using data supplied by the IDT and other sources.

The local agency also prepares a commitment summary consisting of proposed mitigating measures, commitments made to other agencies, and any other commitment made on behalf of the project. The local agency is responsible for maintaining the commitment summary during the environmental review process.

Upon completion of the preliminary DEIS, the local agency submits the document to the MDT Environmental Services Bureau Chief for review and comment by MDT and FHWA. Check with MDT Environmental Services on the number of copies required.

Review comments are returned to the local agency for revision of the preliminary DEIS as appropriate. After making changes in response to comments on the preliminary DEIS, the local agency submits the DEIS to the MDT Environmental Services Bureau Chief for processing (signature) of the title sheet. Upon FHWA approval, MDT returns the signed title page and approval to print the DEIS. Required copies of the document are then submitted to MDT for circulation.

The DEIS is submitted to the MDT Environmental Services Bureau Chief for transmittal to the EPA for processing so that a notice may be published in the Federal Register. A comment period of not less than 45 days begins upon publication in the Federal Register.

The DEIS shall be made available to the public and transmitted to agencies for comment no later than the time the document is filed with the EPA.

Circulation of the DEIS is a responsibility shared between the local agency and the MDT Environmental Services Bureau. The local agency circulates the DEIS to any agency, organization, public official, or person who expresses interest in or requests it. The agency also provides it to any governmental agency authorized to develop and enforce environmental standards, and any governmental agency authorized to issue permits. The MDT Environmental Services Bureau Chief will coordinate with FHWA to ensure that circulation of the DEIS is accomplished in accordance with federal and state requirements. Generally, all copies of the DEIS are furnished free of charge by the local agency. After initial circulation, a printing fee may be charged as long as it does not exceed the cost of printing.

- e. *Draft Section 4(f) Evaluation.* Section 4(f) of the Department of Transportation Act states that the FHWA will not approve the use of land from a significant publicly owned, park recreation area, or wildlife and waterfowl refuge, or any significant historic site unless a determination is made that:
- There is no feasible and prudent alternative to the use of land from the property; and
 - The proposed action includes all possible planning to minimize harm to the property resulting from such use.

A section 4(f) evaluation must be included in a separate section of the environmental document (see the MDT *Environmental Procedures Manual* for additional information).

A separate evaluation is prepared for each location within the project where the use of Section 4(f) property is being considered. The Section 4(f) evaluation must include:

1. Description and need for the proposed action.
2. Description of the Section 4(f) properties.
3. Impacts on the resource by each alternative.
4. Alternatives that avoid Section 4(f) properties and their impacts.
5. Measures to minimize harm.
6. Coordination with appropriate agencies.

The DEIS and Draft Section 4(f) Evaluation Report must be circulated to the Secretary of the U.S. Department of the Interior for a 45-day review and comment period. When appropriate, the Secretary of Housing and Urban Development and the Secretary of Agriculture (federal) are also given an opportunity to review the proposal. When a Section 4(f) property is identified after the DEIS has been processed, a separate Section 4(f) Evaluation is prepared, circulated for comment, and finalized.

- f. *Section 106 Preliminary Case Report.* Section 106 of the National Historic Preservation Act of 1966 requires that the agency determine whether there are any National Register listed or eligible properties that could be affected by the proposed project.

When cultural resources are discovered, the following steps are taken (MDT Environmental Services normally takes the lead in these actions):

1. Send Determination of Eligibility form and cultural resource report to State Historical Preservation Officer (SHPO).
2. If on or eligible for the National Register of Historic Places, send Determination of Effect form to SHPO for concurrence.
3. If resource property is affected, apply the Criteria of Adverse Effect and get SHPO's concurrence.
4. When there is an adverse effect, prepare a Section 106 Preliminary Case Report per 36 CFR 800. This report generally identifies any adverse effects and actions taken to mitigate effects.
5. Send report to FHWA requesting comments; FHWA will forward the report to the Advisory Council on Historic Preservation for their comments.
6. Prior to Final EIS preparation, participate in the development of a Memorandum of Agreement with the Advisory Council, SHPO, and FHWA that includes measures to avoid, mitigate, or accept the adverse effects on a resource.

Projects which involve right-of-way acquisition or excavation have potential to uncover archaeological or historical resources. Under these conditions, an archaeological survey should be considered. For information on archaeological surveys, contact the MDT Environmental Services Bureau Chief.

Section 4(f) requirements apply when the Section 106 property in question is on or eligible for the National Register of Historic Places. When a Section 4(f) Evaluation is required, the Section 106 Preliminary Case Report and Draft Section 4(f) Evaluation will be one document to satisfy the requirements of both laws.

For further information, see the MDT *Environmental Procedures Manual*.

Hearings and Notices

When the local agency advertises for an environmental, design, or combined environmental/design hearing, or offers a notice of opportunity for public hearing, the notice will comply with requirements of 23 CFR, Part 771.111(h) and announces the availability of the environmental document and where it may be obtained and/or reviewed. Where hearings are not required by statute, an informational meeting may serve as a useful forum for public involvement in the environmental process.

- a. References:
 1. Council on Environmental Quality (CEQ) Regulations, 40 CFR, Part 1506.6.
 2. USDOT Order 5610.1C.
 3. 23 CFR, Part 771.
 4. 75-1-201 MCA.
- b. NEPA Requirements:
 1. Public hearings are required for NEPA projects when:
 - (a) Substantial environmental or public controversy exists;
 - (b) The local agency has a substantial interest in holding a hearing; or
 - (c) An agency with jurisdiction over the proposal (permitting agency) requests a hearing.
 2. The Notice of Availability of the DEIS will include the name of the federal lead agency. If there is involvement in floodplains, wetlands, Section 4(f) lands, or

endangered species, this information is included in the notice. These notices are printed in the Federal Register by the lead agency. The notice must be published at least 15 days in advance of the public hearing.

Examples of notification methods are Publishing a notice in a newspaper of general circulation in the general geographic area of the proposal; notifying private groups that are known to be interested in a certain proposal; contacting news media; and placing notices in appropriate regional or neighborhood periodicals. The notice should be published at least 30 days in advance of the public hearing. During this period, the DEIS is open to consideration and comment.

The DEIS notice of availability describes the following elements:

- location of project
- brief description of work
- purpose of statement
- responsible agency and contact information
- where documents are available
- where to send comments

Final Reports and Approvals

- a. *Final Recommendation.* The local agency reviews comments from the hearings and those received from evaluation of the DEIS, and prepares a hearing summary that is submitted to the MDT Environmental Services Bureau Chief for review.
The local agency then analyzes and coordinates comments on the DEIS with the IDT and prepares a final recommendation. The final recommendation contains a description of the preferred alternative, identifies any significant adverse impacts, the proposed measures to minimize harm, and any monitoring or enforcement programs required to ensure implementation of mitigation measures. The local agency submits this recommendation with appropriate comments to the MDT Environmental Services Bureau Chief for review.
- b. *Final Environmental Impact Statement (FEIS).* The local agency prepares the FEIS, coordinates preparation and processing procedures with the MDT Environmental Services Bureau, and submits the FEIS to the MDT Environmental Services Bureau Chief. The FEIS contains the local agency's final recommendation for the preferred alternative, evaluates all reasonable alternatives considered, discusses substantive comments received on the DEIS, summarizes citizen involvement, and describes procedures required to ensure that mitigation measures are implemented. The FEIS also documents compliance with environmental laws and executive orders.

The most common approach to preparing an FEIS incorporates the DEIS essentially in its entirety, with changes made as appropriate throughout the document to reflect the selection of the preferred alternative, modifications to the project, updated information, changes in the assessment of impacts, selection of mitigation measures, wetland and floodplain findings, the results of coordination, comments on the DEIS, and the responses to those comments.

For further information about the format and content of an FEIS, consult the MDT *Environmental Procedures Manual*, and FHWA Technical Advisory T 6640.8A.

The MDT Environmental Services Bureau Chief will coordinate circulation of the preliminary FEIS for review. Review comments are provided to the local agency for use in revising the FEIS. The MDT Environmental Services Bureau reviews the FEIS. The MDT Environmental Services Bureau Chief signs the title page and then obtains approval from the federal lead agency.

The MDT Environmental Services Bureau Chief forwards the signed title page to the local agency for insertion into the FEIS. The local agency prints the FEIS and submits it to MDT.

Responsibility for circulation, distribution, and coordination of the FEIS is shared between the local agency and the MDT Environmental Services Bureau. The local agency notifies the public of the FEIS availability in the same manner as for the DEIS (see Section 9.38(b)2, above), except that no comments are solicited. The local agency circulates the FEIS for public review to any person, organization, or agency that submitted substantive comments, any agency authorized to issue permits, and public institutions. The MDT Environmental Services Bureau Chief will coordinate with FHWA to ensure that circulation of the FEIS is accomplished in accordance with federal and state requirements.

When the use of a Section 4(f) property is identified after the FEIS has been processed, a separate Section 4(f) Evaluation is prepared, circulated for comment, and finalized.

- c. *Final Section 4(f) Evaluation.* When the selected alternative involves the use of Section 4(f) property, a Section 4(f) Evaluation is included as a separate section in the FEIS. The final 4(f) Evaluation contains:
 1. All information required for a draft Evaluation found in Section 9.37e.
 2. A discussion supporting a conclusion that there are no feasible and prudent alternatives to the use of the Section 4(f) property. The discussion must demonstrate that there are unique problems or unusual factors involved in the use of any alternatives that avoid these properties, or that the costs of these alternatives in terms of finances, social, economic, environmental impacts, or community disruption resulting from such alternatives would be extraordinary.
 3. A discussion documenting that the proposed action includes all possible measures to minimize harm to the Section 4(f) property.
 4. A summary of the formal coordination with the Department of the Interior and, as appropriate, the U.S. Departments of Agriculture and Housing and Urban Development.
 5. A copy of the Memorandum of Agreement with the Council on Historic Preservation when historical or archaeological lands are involved.
 6. Copies of all formal comments received and responses to questions.
 7. Concluding statement, "Based upon the above considerations, it is determined that there is no feasible and prudent alternative to the use of land from the Section 4(f) property and that the proposed action includes all possible planning to minimize harm to the Section 4(f) property resulting from such use."

- d. *Record of Decision (ROD)*. This document is prepared by the local agency in draft form. The local agency submits the draft ROD with the preliminary final EIS. The ROD accompanies the FEIS through the review and approval process. The ROD includes the information required by Section 1505.2 of the CEQ Regulations.

The following format is used:

1. **Decision.** Identify the selected alternative. Reference to the FEIS may be used to avoid repetition.
2. **Alternatives considered.** Briefly describe each alternative (with reference to the FEIS, as above) and explain the balancing of values underlying the decision. Economic, environmental, safety, traffic service, community planning, and other factors have different values and may be given different levels of importance. Identify the reasons why some values were considered to be more important than others. Describe the manner in which these values were considered in arriving at the decision. Identify the environmentally-preferred alternative or alternatives. Where the selected alternative is other than the environmentally preferable alternative, the ROD should clearly state the reasons for not selecting the environmentally preferable alternative. In addition, if Section 4(f) property is used, summarize the Section 4(f) Approval.
3. **Measures to minimize harm.** Describe all measures to minimize environmental harm that have been adopted for the proposed action. State whether all practicable measures to minimize environmental harm have been incorporated into the decision and, if not, why.
4. **Monitoring or enforcement program.** Describe any monitoring or enforcement program that has been adopted for the specific mitigation measures, as outlined in the FEIS.
5. **Mitigation Commitments.** Include an item-by-item list of commitments and mitigation measures from the commitment file. The list serves as a ready reference for the design, construction, and maintenance of the project.

9.4 Procedures for Cat Ex Projects

Projects Requiring Documentation (Documented Cat Ex) If any Cat Ex project affects Section 4(f) properties, the project is a "Projects Requiring Documentation." A separate Section 4(f) Evaluation is required as outlined in Section 9.37 d. Supporting documentation must also be prepared for Cat Ex projects that may effect wetlands, farmlands, flood plains, or cultural resource properties.

The Environmental Classification Summary (ECS) Part 5, requires the local agency to conduct a Biological Evaluation of the proposed project's impacts on any listed or proposed Endangered Species Act (ESA) species or critical habitat within the project area. This evaluation is called a BA and must be completed on all federal aid projects prior to requesting federal aid funding authorization for right of way or construction phase

9.5 Procedures for EA Projects

Appointment of Disciplines and Project Manager

After authorization of preliminary engineering funds, the local agency appoints experts in various disciplines to conduct all studies necessary for EA preparation and appoints a PM to be responsible for development of the project. These projects do not require a formal IDT but must use an interdisciplinary approach for the needed investigations.

Coordination

The local agency coordinates with affected federal, state, and local agencies, Indian tribes, interest groups, and the public in determining the scope of the action, alternatives to be considered, and the issues to be addressed. The PM is responsible for the coordination. During the early coordination process, FHWA, in cooperation with the MDT Environmental Services Bureau Chief and the local agency, requests that other involved agencies become cooperating agencies. By law, federal agencies having jurisdiction or special expertise must become cooperating agencies when requested. FHWA normally initiates contact with other federal agencies. FHWA may direct the local agency to contact state or other local agencies. The local agency makes these requests in writing and sends a copy to the MDT Environmental Services Bureau Chief.

Data Collection, Inventory, and Evaluation

The various discipline representatives conduct studies to assess the project's social, economic, and environmental impacts. The depth of a study varies with the magnitude of the proposal. Generally, discipline studies for an EA are developed using the same method outlined in Section 9.21 for EIS projects. Studies are carried out to the point where the extent of environmental impact can be determined. If significant impacts are found during the EA, an EIS is required.

Public Involvement

Refer to the MDT Public Involvement Handbook.

Reports and Recommendations

- a. *Discipline Reports.* Refer to discussions in previous sections.
- b. *Environmental Assessment.* The local agency prepares a preliminary Environmental Assessment (EA) in accordance with the EA outline in the MDT *Environmental Procedures Manual*. Include an area map, vicinity map, site plan, photogrammetric maps (to depict the environmental setting), discipline reports, and any letters demonstrating coordination of environmental concerns, such as endangered species listings, prime and unique farmland determinations, archaeological/historic reports, etc. If the project involves the use of Section 4(f) properties, a separate 4(f) Evaluation is required and is included as a separate section in the EA. The local agency prepares a Biological Evaluation to be included as a separate section in the EA.

The preliminary EA and draft Section 4(f) Evaluation are submitted to the MDT Environmental Services Bureau Chief, who will coordinate their circulation.

If reviewers determine that the proposal may have significant environmental impacts, an EIS is required.

If no significant impacts are found, the MDT Environmental Services Bureau returns the preliminary EA, with comments, to the local agency for revisions.

The local agency submits the revised EA, with the original cover sheet signed by the local official, to the MDT Environmental Services Bureau Chief. MDT approves the EA by signing the cover sheet and forwarding it to FHWA for approval. Once signed by

FHWA, the original cover sheet is returned to the local agency for reproduction and binding with the EA.

A notice announcing the availability of the EA is published by the local agency in a newspaper of general circulation. The local agency then coordinates with MDT the circulation of the approved EA to affected individuals, interested parties, and local, state, and federal agencies with jurisdiction.

If Section 4(f) property is involved, the document is also circulated to the Department of the Interior. If historic or archaeological lands are involved, the document is also circulated to the State Historic Preservation Officer (SHPO).

When the period for public availability of the EA has ended, the local agency evaluates all comments received, including comments from public hearings (if held), meetings, and open houses. The local agency responds to the comments and revises the document as necessary. If comments are minor, the local agency may issue an addendum referencing changes to the EA.

The final EA, Notice of Availability, and Affidavit of Publication are submitted to MDT Environmental Services Bureau Chief with a request for a Finding of No Significant Impact (FONSI). After FHWA issues the FONSI, MDT returns the signed FONSI to the local agency.

Hearing and Notices

EA projects require a hearing if: (1) there is substantial controversy; (2) the local agency wants a hearing; or (3) an agency with jurisdiction requests one. For additional information, refer to Section 9.3, Hearings and Notices.

EA projects normally have less potential for environmental impacts and public controversy than EIS projects, and consequently are less apt to require public hearings. Prepare the EA in advance of any public hearing. The public hearing notice follows the format and time schedule outlined in Section 9.38. The notice of public hearing published in local newspapers should announce that the EA is available and where it can be obtained or reviewed.

Even when a hearing is not required, the local agency will publish a notice in the local newspaper (similar to a public hearing notice) advising the public that the EA is available for review and comment and noting where the document may be obtained. The public review and comment period for an EA is 30 days. If a Section 4(f) Evaluation is included, a 45-day public review and comment period is required. MDT will provide public notice that an EA and FONSI are available from the agency or the federal lead agency.

9.6 Project Reevaluation

Whenever single or cumulative conditions have occurred that might cause new or more severe environmental impacts, the local agency shall reevaluate an environmental document. A written reevaluation is required when any of the following conditions exist: 1. An acceptable FEIS has not been submitted to FHWA within three years from the date of the DEIS circulation. 2. Major steps to advance the project (such as approval to acquire a substantial portion of the right-of-way,

or approval of PS&E) have not occurred within three years of FEIS approval or supplemental FEIS approval. The local agency reevaluates the project by conducting appropriate environmental studies or, if necessary, by preparing an EA. The reevaluation is submitted in written form to the MDT Environmental Services Bureau Chief. If the reevaluation identifies changes in the proposed project, the affected environment, the anticipated impacts, or the proposed mitigation measures, which result in significant impact that were not evaluated in the original EIS, a new or supplemental document is prepared and circulated. Other types of changes including those which substantially reduce the project's impacts, do not require the preparation of a supplement. For additional guidance on project reevaluations, refer to 23 CFR 771 and the MDT *Environmental Procedures Manual*.

9.7 Project Reviews

References

- a. NEPA Section 1505.2 and 1505.3.
- b. 23 CFR 771.109(b).

Definition

Project reviews are procedures for monitoring project development to ensure that environmental commitments are kept and adverse impacts mitigated. Reviews are conducted periodically by responsible local agency or monitoring agency officials throughout the various stages of project development and subsequent maintenance.

Procedures

- a. The local agency ensures that decisions recorded in environmental documents are accomplished in design and construction of projects and maintained or improved upon during the life of the project.
- b. The local agency continues to maintain the project environmental commitment file which follows the project through design, right-of-way acquisition, PS&E, construction, and maintenance.
- c. During construction, the local agency implements and monitors the adopted impact mitigation measures to ensure that they are satisfactorily maintained or improved upon.
- d. When unique or unusual mitigation is required, the local agency conducts periodic reviews during construction or maintenance to evaluate the effectiveness of mitigation measures that were incorporated into the construction contract.
- e. The local agency must request concurrence from the Regional Highways and Local Programs Engineer for any significant alterations to mitigation measures agreed to during the environmental process, even when changes are made during construction or maintenance.
- f. The local agency makes available progress reports and any results of the impact mitigation measures at the request of the public or agencies.

Commitment Summary

As an initial part of project development, the local agency establishes a project commitment file. Establishment of this file generally coincides with preparation of the environmental document or could be at later stages as required. The file consists of proposed mitigating measures, commitments made to resource or other agencies with permitting authority, and other commitments made on the project. The file normally consists of design and environmental

commitments. Other commitments may be added at the local agency's discretion, such as right-of-way, access, maintenance, permits, and agreements. The local agency continues to maintain the commitment file as a project progresses through its development process. Whenever commitments are made, they are incorporated into project documents and transferred from one phase of the project to the next. Commitments are normally included or identified in the following documents or actions:

- a. Environmental Impact Statement (Record of Decision), Environmental Assessment (Finding of No Significant Impact), or Categorical Exclusion.
- b. Design reports.
- c. Right-of-way negotiations.
- d. Access plans.
- e. Findings and order.
- f. Contract plans.
- g. Preconstruction conference.
- h. Change orders.
- i. End of project report.
- j. Maintenance. To organize and track commitments made during the development and implementation of a project, a "Record of Commitment," DOT Form 220-021, or similar form may be used. When a commitment is made, record it on the Record of Commitment form. The form contains the detail necessary to document the commitment, including references to correspondence, agreement numbers, etc. A commitment may be revised when all parties involved agree to the revision. Records (forms) on completed commitments should be retained for at least a year after the completion date.

Commitments requiring ongoing maintenance need to be retained in the files as long as the commitment is active.